

Message Text

SECRET

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W

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FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC IMMEDIATE 8541

S E C R E T SECTION 1 OF 8 USUN 3143

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EXDIS

FROM US DEL LOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

E.O. 11652: GDS

TAGS: PLOS, OVIP

SUBJECT: PARTICIPATION BY THE SECRETARY IN LOS NY SESSION

REF: STATE 194944

1. OVERVIEW. WE AND OTHERS DECIDED TO DRAW THE BATTLE LINES
EARLY IN ALL COMMITTEES. IN ALL BUT THE FIRST COMMITTEE,
THIS HAS FOCUSED NEGOTIATIONS ON THE REAL PROBLEMS AS WE
PERCEIVE THEM, AND DIRECTED ATTENTION AWAY FROM TEXTS WE
DO NOT WANT SUBSTANTIALLY CHANGED. THE THREE COMMITTEES AND THE
DISPUTE SETTLEMENT NEGOTIATION CONTINUE TO RUN LARGELY
INDEPENDENTLY OF EACH OTHER. WE COULD EXPECT THIS TO CONTINUE
AT LEAST UNTIL AMERASINGHE RETURNS ABOUT AUGUST 23.

2. OUR OBJECTIVE IS TO COMPLETE THE SUBSTANCE OF COMMITTEE
II, III AND HOPEFULLY, DISPUTE SETTLEMENT NEGOTIATIONS ON
SATISFACTORY TERMS AT THIS SESSION, PARTICULARLY BECAUSE
THE COMMITTEE II AND III TEXTS WILL INFLUENCE THE NATURE
OF UNILATERAL COASTAL STATE ACTIONS EVEN IF A TREATY IS
DELAYED. WE DO NOT BELIEVE THIS CAN BE DONE IN COMMITTEE I,
BUT IF THINGS GO REASONABLY WELL, WE CAN COME CLOSER.

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3. TO DO THIS, WE MUST FIRST GIVE THE CLEAR SIGNAL THAT CHANGES IN TEXTS TO RESOLVE OUR MAJOR PROBLEMS MUST BE MADE. THUS, WE HAVE TAKEN HARDLINE POSITIONS, AND WILL CONTINUE TO DO SO DURING THE SECOND WEEK. WE VIEW YOUR FIRST VISIT ON AUGUST 13 AS (1) CONFIRMING U.S. DETERMINATION, (2) WARNING THE OTHERS OF THE CONSEQUENCES OF A CONFRONTATION OVER THE DEEP SEABEDS, (3) GIVING YOU A FIRST-HAND IMPRESSION OF THE OPPOSING VIEWS, (4) LAYING THE FOUNDATION FOR SUBSTANTIVE INTERVENTION BY YOU WITH SPECIFIC PROPOSALS DURING YOUR SUBSEQUENT VISIT WHERE THIS COULD BE HELPFUL. THUS, WE PLAN TO EMPHASIZE SUBSTANTIVE PROBLEMS RATHER THAN TRADITIONAL POLITICAL TIES IN SELECTING STATE FOR YOUR BILATERALS ON AUGUST 13. FOR THE TIME BEING, ON CERTAIN ISSUES - E.G., HIGH SEAS STATUS OF THE ECONOMIC ZONE -- WE ARE TELLING THE OPPOSITION TO MAKE A PROPOSAL, BECAUSE IT IS CLEAR THAT MARITIME POWER INITIATIVE WILL NOT HAVE AS GOOD A CHANCE OF SUCCEEDING; WE ARE WORKING BEHIND THE SCENES WITH SYMPATHETIC MEMBERS OF OPPOSING GROUPS (E.G., AUSTRALIA IN THE COASTAL STATE GROUP).

4. COMMITTEE I GOT CAUGHT IN A PROCEDURAL WRANGLE OVER WORKING GROUPS AND THEIR CHAIRMEN THAT IS, IN FACT, A SUBSTANTIVE FIGHT OVER THE REVISED SNT. THE RADICAL LDC'S WOULD LIKE TO DISCARD THE WHOLE TEXT (AND IN EFFECT, THE FIRST COMMITTEE CHAIRMAN ENGO WHO PUT IT OUT), WHILE THE INDUSTRIALIZED STATES WANT TO NEGOTIATE ONLY SELECTED PARTS OF IT. BY THE TIME YOU ARRIVE, THE REAL SUBSTANTIVE ISSUES OUTLINED FOR YOU IN EARLIER MEMORANDA SHOULD BEGIN TO EMERGE.

5. THE LDC'S ARE BEGINNING TO GET NERVOUS ABOUT WHAT THEY PERCEIVE AS A TOUGHER U.S. ATTITUDE; WE ARE DELIBERATELY AVOIDING GIVING THE IMPRESSION WE CAN BE EXPECTED TO SACRIFICE SUBSTANTIVE INTERESTS IN ORDER TO WRAP UP A TREATY NOW. THIS MUST BE CAREFULLY MODULATED, SINCE WE DO NOT WISH TO ENCOURAGE A GENERAL LDC REBELLION. THE RISK OF THIS IN COMMITTEE I IS CONSIDERABLE.

6. BY THE TIME OF YOUR SECOND VISIT, IT WILL BE ABUNDANTLY CLEAR TO MOST DELEGATIONS THAT SOMETHING MUST BE DONE TO SAVE THE CONFERENCE. WE WOULD ANTICIPATE YOUR HAVING IN-DEPTH
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MEETINGS ON SELECTED ISSUES, WHERE YOU WOULD PRESENT SPECIFIC IDEAS. IN ADDITION TO BILATERALS, SOME SUBJECT-ORIENTED MULTILATERAL MEETINGS MIGHT BE USEFUL. WE DO NOT BELIEVE PUBLIC PRESENTATION OF NEW PROPOSALS WOULD WORK BECAUSE OF THE GENERAL FEELING AMONG LDC'S THAT THE U.S. DICTATED THE OUTCOME OF THE LAST SESSION IN COMMITTEE I.

7. FINALLY, DURING BOTH VISITS, SOME BILATERALS WILL ALSO

FOCUS ON SPECIFIC PROBLEMS OF HIGH POLITICAL CONTENT THAT COULD GET OUT OF HAND. THUS, FOR EXAMPLE, WE WOULD HOPE YOUR MEETING WITH THE EGYPTIANS COULD HELP PERSUADE THEM NOT TO STAGE A MAJOR FIGHT OVER THE STRAIT OF TIRAN.

COMMITTEE I

A. CURRENT NEGOTIATING STATUS OF THE MAIN OUTSTANDING ISSUES - THE LDCS HAVE MADE A MAJOR EFFORT DURING THE FIRST WEEK OF THE CONFERENCE TO ENSURE THAT THERE IS A COMMON UNDERSTANDING THAT NO ARTICLE IN THE SNT IS YET AGREED UPON. THIS IS THE EXTREMIST REACTION TO THE "SELL OUTS" IN THE G-77, I.E., THE LDC MEMBERS OF THE SECRET BRAZIL GROUP WHO NEGOTIATED THE RSNT WITH US.

WE CANNOT BE SURE THAT ONCE THE LDC EXTREMISTS ARE FINISHED LETTING OFF STEAM, WHETHER THEY WILL SEEK TO RE-OPEN ONLY A FEW FUNDAMENTAL ISSUES IN THE RSNT. THEY HAVE RELUCTANTLY ACCEPTED THE RSNT AS A BASIS OF NEGOTIATION AND HAVE GIVEN UP AN EARLIER EFFORT TO USE THE 1975 GENEVA TEXT INSTEAD.

IT APPEARS AT THIS STAGE THAT THE REAL CONCERN OF THE GROUP OF 77 AND THE ISSUES THAT THEY WOULD WANT TO NEGOTIATE FULLY ARE LIMITED TO STRENGTHENING THE ENTERPRISE SO THAT THERE IS A "GENUINE PARALLEL SYSTEM OF EXPLOITATION" AND THE VOTING PROCEDURES IN THE ASSEMBLY AS WELL AS ITS POWERS AND FUNCTIONS VIS-A-VIS THE COUNCIL.

THE PRINCIPAL ISSUES WE WANT TO NEGOTIATE AT THIS SESSION ARE VOTING IN THE COUNCIL AND IMPROVEMENT TO THE ACCESS SYSTEM.

THE SOVIET UNION AND CERTAIN INDUSTRIALIZED COUNTRIES
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CONTINUE TO PRESS FOR INCLUSION OF A QUOTA, OR ANTI-MONOPOLY, PROVISION IN THE TREATY -- ALTHOUGH THEY ARE NOT PUSHING THIS ISSUE AT THIS TIME.

FINALLY, WE HAVE CLEAR INDICATIONS THAT THE CANADIAN DELEGATION HAS INSTRUCTIONS TO SEEK AMENDMENTS REGARDING THE PRODUCTION LIMITATION IN ARTICLE 9.

THERE HAVE BEEN NO SUBSTANTIVE NEGOTIATIONS DURING THE FIRST WEEK OF THE SESSION AND CONSEQUENTLY NO CHANGE IN THE NEGOTIATING SITUATION ON ANY OF THESE ISSUES AS COMPARED WITH THE CLOSING DAYS AND THE MARCH SESSION. COMMITTEE I HAS CONCENTRATED EXCLUSIVELY ON PROCEDURAL ISSUES, WHICH IN FACT WERE FUNDAMENTAL SUBSTANTIVE ISSUES. THE DEBATE HAS BEEN THE SELECTION OF TWO CO-CHAIRMEN. JAGOTA OF INDIA

HAS BEEN SELECTED. U.S. WAS ISOLATED AND LAST. DEVELOPED
WORLD WILL PROBABLY BE REPRESENTED BY THE E.C. REPRESENTATIVE.

WHEN THE SUBSTANTIVE NEGOTIATIONS BEGIN, THE LDCS WILL
PROBABLY SEEK A POLITICAL COMPROMISE ON THE ACCESS SYSTEM
SO AS TO ENSURE THE VIABILITY OF THE ENTERPRISE. IF THEY
ARE UNSUCCESSFUL, THEY -- OR AT LEAST THE RADICAL LEADER-
SHIP -- WILL THEN ATTEMPT TO DESTROY THE PARALLEL SYSTEM
AND RETURN TO PROVISIONS OF THE 1975 GENEVA TEXT -- EX-
CLUSIVE OPERATION BY THE ENTERPRISE. THE LDCS WILL ALSO
REOPEN THE ARTICLE ON THE ASSEMBLY TO MAKE IT ABSOLUTELY
CLEAR THAT THE ASSEMBLY IS THE PARAMOUNT POLICY-MAKING BODY
IN THE AUTHORITY AND THAT THE COUNCIL IS SUBORDINATE AND IS
STRIPPED OF POLICY-MAKING POWERS.

THE U.S. WILL, AT THE APPROPRIATE TIME, PROPOSE A NEW
ARTICLE ON THE COMPOSITION AND VOTING IN THE COUNCIL AND
IMPROVEMENTS TO THE ACCESS SYSTEM.

NOTE BY OC/T: RAISED TO EXDIS PER SSO-A.OTTO.

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S E C R E T SECTION 2 OF 8 USUN 3143

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EXDIS

FROM US DEL LOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

B. BASIC STRATEGY/TACTICS OF THE U.S. DELEGATION
TO ACHIEVE SUCCESSFUL PROGRESS - THE U.S. STRATEGY MUST
BE DEVELOPED AGAINST THE BACKGROUND OF A SIGNIFICANT

CHANGE IN THE NEGOTIATING SITUATION AT THIS SESSION OF THE CONFERENCE. AT THE MARCH-MAY SESSION, THE COMMITTEE I NEGOTIATIONS WERE EFFECTIVELY DOMINATED BY THE SECRET BRAZIL GROUP (BRAZIL, PERU, MEXICO, CHILE, JAMAICA, SINGAPORE, SRI LANKA, KENYA, NORWAY, FRANCE, UNITED STATES), WHICH, ACTING COLLECTIVELY, EXERCISED A CONSTRUCTIVE AND MODERATING INFLUENCE ON THE PROGRESS OF THE NEGOTIATION AND THE PREPARATION OF DRAFT ARTICLES. THIS PROCEDURE, ALTHOUGH EXTREMELY SUCCESSFUL, PROVOKED A STRONG, NEGATIVE REACTION AMONG CERTAIN COUNTRIES AT THE END OF THE LAST SESSION. THIS HAS LED TO A MAJOR EFFORT BY THE MORE EXTREMIST COUNTRIES (ALGERIA, THE ARAB STATES, INDIA AND MEXICO) TO CHANGE THE PROCEDURES IN COMMITTEE I AND WITH THE OBJECT OF MOVING BACK TOWARD THE 1975 GENEVA SNT ON IMPORTANT ISSUES. THESE COUNTRIES HAVE BEEN SUCCESSFUL IN INTRODUCING EXTREMIST RHETORIC INTO THE DEBATE AND HAVE INDICATED THEY ARE PREPARED TO PRESS FOR POSITIONS WHICH WOULD BE UNACCEPTABLE TO THE U.S. IN SUM, THEY ARE SEEKING TO RADICALIZE THE NEGOTIATIONS.

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FOR THE TIME BEING, THOSE COUNTRIES WHICH ACTED AS MODERATES AND CONTRIBUTED TO PUTTING TOGETHER THE ELEMENTS OF A BROADLY ACCEPTABLE COMPROMISE PACKAGE IN MARCH HAVE BEEN DISCREDITED TO SOME DEGREE WITH THE GROUP OF 77 AND HAVE THEREFORE BEEN NEUTRALIZED AS EFFECTIVE PLAYERS. UNTIL SUCH TIME AS THESE COUNTRIES CAN ONCE AGAIN DOMINATE THE NEGOTIATIONS, WE CANNOT HOPE TO HAVE THE GROUP OF 77 ACCEPT U.S. POSITIONS. THE RE-EMERGENCE OF THE MODERATES CANNOT BE IMPOSED, HOWEVER. IT MUST COME ABOUT THROUGH A NATURAL PROCESS.

WE EXPECT THAT IN THE FIRST PART OF THE SESSION, THERE WILL BE MAJOR DRIVE BY THE RADICALS IN THE NEGOTIATION TO UNDO THE WORK DONE IN MARCH ON CERTAIN KEY ISSUES. THIS WILL ENTAIL NUMEROUS PUBLIC AND PROBABLY VITRIOLIC DEBATES BY THE MORE EXTREMIST DELEGATIONS. WE BELIEVE THAT THERE IS NO EFFECTIVE WAY TO PREVENT THIS FROM HAPPENING. OUR OVERALL STRATEGY WILL BE TO COUNTER EXTREMIST STATEMENTS BY TAKING A VERY TOUGH POSITION OURSELVES ON ALL MAJOR ISSUES, AND SHOWING NO FLEXIBILITY ON QUESTIONS OF CONCERN TO THE GROUP OF 77. IT IS OUR EXPECTATION THAT THIS WILL RESULT IN A BLOW-UP WITHIN COMMITTEE I. HOWEVER, WE BELIEVE THAT THE SITUATION WILL CHANGE WHEN IT BECOMES EVIDENT TO THE VAST MAJORITY OF DELEGATIONS THAT THE U.S. WILL NOT BACK DOWN ON THE ISSUES OF VITAL IMPORTANCE OF IT AND THAT THE RADICALS WILL NOT SUCCEED IN GETTING THE U.S. TO AGREE TO UNACCEPTABLE COMPROMISES. AT THIS POINT, WE EXPECT THAT THE CONFERENCE WILL RECOGNIZE THAT THE TACTICS OF THE RADICALS ARE JEOPARDIZING THE NEGOTIATIONS

AND THE POSSIBILITY OF TREATY. THE FOUNDATION WILL THIS BE LAID FOR THE MODERATES IN THE NEGOTIATIONS TO REASSUME THEIR LEADERSHIP ROLE IN THE NEGOTIATION.

ONE IMMEDIATE RESULT OF THE U.S. STRATEGY WILL BE THAT FOR POSSIBLY HALF THE SESSION, THERE WILL BE NO PROGRESS MADE IN SUBSTANTIVE ISSUES. THERE MAY ALSO BE PRESS ATTACKS CRITICIZING THE U.S. FOR TAKING UNREALISTIC AND UNRESPONSIVE POSITIONS.

C. THE SECRETARY'S PARTICIPATION - WE BELIEVE THAT THE PRINCIPAL OBJECTIVE OF THE SECRETARY'S PARTICIPATION
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ON AUGUST 13 AS REGARDS THE DEEP SEABEDS NEGOTIATIONS SHOULD BE TO RE-ENFORCE THE HARDLINES POSITION OUTLINED ABOVE. WE BELIEVE THAT THE SECRETARY SHOULD MAKE CLEAR TO KEY INFLUENTIAL DELEGATIONS THAT THE LAW OF THE SEA NEGOTIATIONS TOUCH ON A NUMBER OF ISSUES OF VITAL NATIONAL INTEREST TO THE UNITED STATES AND THAT WE CANNOT AGREE TO A TREATY THAT DOES NOT MEET OUR BASIC CONCERNS. THE SECRETARY CAN STRESS THAT THE U.S. HAS BEEN A LEADER IN THE NEGOTIATIONS IN SEEKING COMPROMISES AND ATTEMPTING TO ACCOMMODATE THE INTERESTS OF THE LARGE MAJORITY OF NATIONS WITH OCEAN CONCERNS. THE U.S. HAS MADE A NUMBER OF COMPROMISE PROPOSALS IN AN EFFORT TO REACH A BROADLY ACCPETABLE AGGEMENT. SOME OF THESE HAVE ENTAILED IMPORTANT CONCESSIONS ON OUR PART. HOWEVER, THERE IS A POINT BEYOND WHICH THE US. IS NOT PREPARED TO GO.

THE SECRETARY SHOULD ALSO MAKE CLEAR THAT IT WOULD BE A MISTAKE FOR THOSE NATIONA WHICH HOPE TO SEE U.S. CON-CESSION TO DELAY FINAL AGREEMENT ON AN LOS TREATY UNTIL NEXT YEAR IN THE HOPE THAT A NEW ADMINISTRATION IN WASHINGTON WOULD BE MORE FLEXIBLE AND FORTHCOMING. THE U.S. POSITION ON THE LAW OF THE SEA HAS ENJOYED BROAD, BIPARTISAN SUPPORT FOR MANY YEARS. IT HAS NEVER BEEN A POLITICAL ISSUE AND THERE IS NO REASON TO BELIEVE THAT IT WILL BECOME ONE.

AT THE SAME TIME, THE SECRETARY SHOULD REMOVE ANY IMPRESSION THAT THE U.S. IS WILLING TO MAEK CONCESSIONS IN RETURN FOR A QUICK AGREEMENT. WE WOULD CLEARLY PREFER TO RESOLVE ALL MAJOR ISSUES AT THIS SESSION OF THE CONFERENCE. WE BELIEVE THAT, THE PASSAGE OF TIME, A NEGOTIATED SETTLEMENT WILL BECOME MORE DIFFICULT AS MORE AND MORE NATIONS TAKE UNILATERAL ACTION. HOWEVER, U.S. IS PREPARED TO CONTINUE IN THISE NEGOTIATIONS AS LONG AS THERE IS ANY REAL PROSPECT OF A NEGOTIATED SETTLEMENT WHICH COULD HAVE THE SUPPORT OF A LARFE NUMBER OF STATES.

WE WOULD HOPE THAT THE LEADERSHIP OF THE CONFERENCE WOULD TRY TO ARRIVE AT THE BASIC POLITICAL COMPROMISES WHICH ARE ESSENTIAL TO A SUCCESSFUL TREATY AT THIS SESSION. IF THAT IS NOT POSSIBLE, THE NEGOTIATIONS WILL HAVE TO CONTINUE NEXT YEAR.

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D. RELATIONSHIP BETWEEN AUGUST 13 VISIT AND VISIT OF AUGUST 24-26 - IF THE STRATEGY OUTLINED ABOVE IS SUCCESSFUL AND THE HARDLINE POSITION TAKEN BY THE US. SUCCEEDS, AFTER AN EARLY BLOWUP, IN STRENGTHENING THE POSITIONS, CAN BEGIN. AT THIS STAGE, THE SECRETARY MAY WISH TO EXERCISE WHAT FLEXIBILITY WE MAY HAVE IN REGARD TO CERTAIN ISSUES, IF IT APPEARS AT THAT TIME THAT IT WOULD LEAD TO A SATISFACTORY COMPROMISE.

COMMITTEE II

A. STATUS OF THE NEGOTIATIONS

THE PROCEDURAL PHASE OF THIS SESSION HAS BEEN COMPLETED, AND OUR OBJECTIVE IN SEEKING TO FOCUS THE COMMITTEE ON MAJOR OUTSTANDING ISSUES HAS BEEN ACHIEVED. COMMITTEE II, AT THE OUTSET, WILL DEAL WITH THE QUESTIONS OF: (1) THE LEGAL STATUS OF THE ECONOMIC ZONE AND THE RIGHTS AND DUTIES OF COASTAL AND OTHER STATES (INCLUDING LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES); (2) ACCESS OF LANDLOCKED STATES TO THE SEA AND RIGHTS OF TRANSIT; AND (3) THE CONTINENTAL SHELF, INCLUDING THE QUESTION OF REVENUE SHARING. THESE ISSUES WILL BE DEALT WITH INDIVIDUALLY BELOW. EACH SET OF ISSUES HAS BEEN ASSIGNED TO A NEGOTIATING GROUP COMPOSED OF INTERESTED STATES AND SUBSTANTIVE DISCUSSIONS HAVE BEGUN. THE MECHANISM SELECTED HAS NOT YET PROVED PRODUCTIVE AND THE DEBATES HAVE BEEN OF A GENERALLY PHILOSOPHICAL NATURE. AS THE SITUATION SOLIDIFIES, OTHER MEANS OF DEALING WITH THESE ISSUES WILL HAVE TO EVOLVE. IT IS CLEAR THAT SEVERAL DELEGATIONS, INCLUDING CERTAIN LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (L/L AND GDS), WISH TO LESSEN THE INFLUENCE OF CHAIRMAN AGUILAR (VENEZUELA) ON THE OUTCOME OF THE NEGOTIATIONS, SINCE THEY FEEL THAT HE EXHIBITED NATIONAL PREJUDICES IN HIS DRAFTING OF THE REVISED SINGLE NEGOTIATING TEXT (RSNT). AGUILAR, WHILE IN OUR JUDGEMENT IS THE BEST AVAILABLE, THOUGH INCLINED AGAINST US ON SOME ISSUES, NOW CHAIRS ALL NEGOTIATING GROUPS AND IS KEEPING A FIRM GRASP ON THE PROCEEDINGS OF THE COMMITTEE.

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NOTE BY OC/T: RAISED TO EXDIS PER SSO-A. OTTO.

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S E C R E T SECTION 3 OF 8 USUN 3143

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EXDIS

FROM US DEL LOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB LEARSON

I. MAJOR OUTSTANDING ISSUES

A. HIGH SEAS STATUS OF THE ECONOMIC ZONE

IT HAS CONSISTENTLY BEEN THE POSITION OF THE U.S. THAT THE WATERS WITHIN THE ECONOMIC ZONE MUST RETAIN THEIR STATUS AS HIGH SEAS, AND DEFINED IN EXISTING INTERNATIONAL LAW, EXCEPT PERTAINING TO SPECIFIC RIGHTS ASSIGNED TO COASTAL STATES IN THIS TREATY. THIS WOULD GIVE TO THE COASTAL STATES EXCLUSIVE RIGHTS RESPECTING RESOURCES, INCLUDING FISHERIES. OUR POSITION IS STRONGLY OPPOSED BY A SUBSTANTIAL NUMBER OF STATES, PRIMARILY MEMBERS OF THE COASTAL STATES GROUP. PARTICULARLY EFFECTIVE IN THIS OPPOSITION ARE MEXICO, PERU, BRAZIL, AND INDIA. THE OPPOSITION IS OF THE VIEW THAT EXCEPT FOR NAVIGATION, COMMUNICATION AND OVERFLIGHT, ALL RIGHTS IN THE ZONE FALL TO THE COASTAL STATE. THE RSNT STATES THAT THE ECONOMIC

ZONE IS NOT HIGH SEAS.

THE U.S. TACTICS AT THIS POINT INVOLVE ASSUMING
FAIRLY TOUGH STANCE TO INDICATE THE IMPORTANCE OF THE
ISSUE AND TO FORCE THE OPPOSITION TO RESPOND, THUS
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CREATING THE INITIATIVE FOR EVENTUAL SUBSTANTIVE
NEGOTIATIONS BY A SMALL GROUP OF NATIONS.

THE TIME IS NOT YET RIPE FOR THESE FINAL TALKS.
THE SECRETARY CAN, HOWEVER, THROUGH EMPHASIS ON THE
IMPORTANCE OF THE ISSUES, ENCOURAGE AN ATMOSPHERE CON-
CLUSIVE TO MOVEMENT BY THE OTHER SIDE. ALTHOUGH WE HAVE
NOT SPECIFICALLY INDICATED THIS AS SUCH, THE OBJECTIVE IS
TO WORK TOWARD A FORMULA OF WORDS THAT PROTECT OUR NATURAL
INTERESTS (PRIMARILY MILITARY) AND TAKES AWAY FROM
THE OPPOSITION THE "SUI GENERIS" ARGUMENT. IF THIS CAN
BE ACCOMPLISHED, THE WORDS "HIGH SEAS" LOSE MUCH OF THEIR
RELEVANCE. ONE PART OF SUCH A FORMULATION COULD BE A
PROPOSAL MADE DURING THE LAST SESSION OF THE CONFERENCE
BY AUSTRALIA WHICH WOULD DEFINE THE ECONOMIC ZONE AS
HIGH SEAS "PROVIDED THAT THE EXCLUSIVE ECONOMIC ZONE
IS NOT HIGH SEAS WITH RESPECT TO THE EXERCISE OF THE
COASTAL STATES' RIGHTS PROVIDED FOR IN THIS CONVENTION."

BY AUGUST 24, IT IS LIKELY THAT THE ISSUE WILL BE
NARROWED, OTHER PARTICIPANTS WILL APPROPRIATELY BE IM-
PRESSED WITH THE NEED TO RESOLVE THIS ISSUE TO OUR
SATISFACTION (AND THE SATISFACTION OF OTHER MARITIME
POWERS), AND THE MAJOR PARTICIPANTS PROPERLY NARROWED
AND REPRESENTATIVE TO MAKE THE NEGOTIATION OF THE FINAL
SOLUTION POSSIBLE.

B. LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES

THIS GROUP (ORGANIZED) REPRESENTS A POTENTIAL BLOCKING
THIRD IF THEY REMAIN SOLIDIFIED. THEY HAVE VIGOROUSLY
PRESSED FOR THEIR INTERESTS. THERE ARE THREE BASIC
CATEGORIES OF ISSUES IN WHICH THEY HAVE AN INTEREST, TO
BE ELABORATED IN VARIOUS PARTS OF THIS PAPER. THEY ARE:
(1) THE RIGHT OF ACCESS TO THE SEA BY LANDLOCKED
COUNTRIES; (2) SOME FORM OF PREFERENTIAL ACCESS FOR
L/L AND GDS TO THE LIVING RESOURCES IN THE ECONOMIC
ZONES OF NEIGHBORING STATES OR IN THE REGION; AND (3)
REVENUE SHARING FROM THE MINERAL RESOURCES EXTRACTED
FROM THE CONTINENTAL MARGIN BEYOND 200 MILES (SOME WOULD
SEEK A SHARE OF REVENUES INSIDE AS WELL).

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THESE ISSUES DO NOT DIRECTLY AFFECT US INTERESTS AS THEY ARE REFLECTED IN THE RSNT. HOWEVER, THEIR RESOLUTION IS IMPORTANT TO THE SUCCESSFUL COMPLETION OF THE TREATY.

THE US TACTIC HAS BEEN TO REMAIN NEUTRAL, EXPLORING SOLUTIONS SUGGESTED BY BOTH SIDES AND ENCOURAGING THEM TO SOLVE THE PROBLEMS THROUGH NEGOTIATION.

AT THIS TIME, THE SECRETARY SHOULD TAKE NOTE AND EXPRESS SYMPATHY FOR THE IMPORTANCE OF RESOLVING THE PROBLEM. PREMATURE TILT TOWARD THE L/L AND GDS COULD RESULT IN NEGOTIATING PROBLEMS WITH THE COASTAL STATES. THE OPPOSITE TILT MIGHT RESULT IN LOSS OF L/L AND GDS SUPPORT FOR OUR POSITION ON THE STATUS OF THE ECONOMIC ZONE, WHICH THEY NOW GENERALLY SUPPORT. A POTENTIAL DANGER IS THAT THE COASTAL STATES MAY OFFER THE L/L AND GDS GROUP CERTAIN RIGHTS IN THE ECONOMIC ZONE IN EXCHANGE FOR SUPPORT OF THE COASTAL STATE POSITION ON THE STATUS OF THE ZONE. ANY INDICATION OF THAT SHOULD BE MET BY A CORRESPONDING INDICATION OF THE IMPORTANCE OF RESOLVING THE STATUS OF THE ZONE FOR ACHIEVING A TREATY.

C. THE CONTINENTAL MARGIN

THE BASIC ISSUES UNDER DISCUSSION CONCERNING THE CONTINENTAL MARGIN INCLUDE THE DEFINITION OF THE OUTER LIMIT OF THE MARGIN AND THE QUESTION OF REVENUE SHARING FROM THE MARGIN BEYOND TWO HUNDRED MILES. THE BROAD MARGIN STATES WISH TO EXTEND THEIR MINERAL RIGHTS AS FAR SEAWARD AS POSSIBLE. THE L/L AND GDS, ALONG WITH A FEW OTHERS (INCLUDING THE USSR AND JAPAN) WISH TO LIMIT THE JURISDICTION OF COASTAL STATES IN THIS REGARD. THE US HAS TAKEN A MORE OR LESS NEUTRAL POSITION SINCE WE HAVE LITTLE TO GAIN BY A BROAD MARGIN DEFINITION. WE HAVE STRESSED THE IMPORTANCE OF A PRECISE DEFINITION OF THE MARGIN (TO CORRECT THE INADEQUACIES OF THE 1958 GENEVA CONVENTION) WHICH PROVIDES FOR REASONABLE COASTAL STATE CONTROL OF MINERAL RESOURCES OF THE MARGIN, AND THE NECESSITY TO OFFSET

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THE RESULTING LOSS TO THE INTERNATIONAL COMMUNITY BY INSTITUTING A REASONABLE SYSTEM OF REVENUE SHARING IN THAT PORTION OF THE MARGIN BEYOND 200 MILES.

DURING THE LAST SESSION OF THE CONFERENCE WE SUPPORTED IRISH/CANADIAN PROPOSAL THAT WOULD GIVE TO THE COASTAL STATE THE OPTION WHETHER TO END THE MARGIN AT A FIXED DISTANCE (60 MILES FROM THE FOOT OF THE SLOPE) OR AT A POINT MEASURED BY THE DEPTH OF THE SEDIMENTS. ALONG WITH THIS, WE PROPOSED A SYSTEM OF REVENUE SHARING BEYOND 200 MILES WHICH CALLS FOR NO SHARING DURING THE FIRST FIVE YEARS AND THEN AN INCREASING PERCENTAGE CULMINATING IN A VALUE OF 5 PERCENT OF THE VALUE OF THE RESOURCES AT THE SITE AT THE END OF THE TENTH YEAR AND THEREAFTER. BOTH PROPOSALS SEEMED TO ATTRACT ATTENTION.

US TACTICS AT THIS POINT CALL FOR NEUTRALITY ON THE ISSUE, BUT WITH QUIET SUPPORT OF THE PACKAGE. WHILE WE PREFER A "FIXED DISTANCE" SOLUTION, IT HAS PROVED NON-NEGOTIABLE IN THE PAST. THE US CONTINUES TO INSIST THAT ALL COASTAL STATES, WHETHER DEVELOPED OR DEVELOPING, BE SUBJECT TO THE SAME REVENUE SHARING FORMULA.

THE SECRETARY SHOULD CONTINUE TO STRESS THAT OUR PURPOSE IS TO ENSURE A PRECISE AND FAIR DEFINITION OF THE MARGIN AND THAT WE SUPPORT REASONABLE, NON-DISCRIMINATORY REVENUE SHARING.

IF THE MATTER IS UNRESOLVED AT THE END OF AUGUST, THE SECRETARY'S INTERVENTION MAY PROVE DESIRABLE.

NOTE BY OC/T: RAISED TO EXDIS PER S/S-O - MR. OTTO.

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FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

FROM US DEL LOS

D. DEPENDENT TERRITORIES

WHILE THIS ISSUE IS NOT ONE UPON WHICH THERE WILL BE EARLY NEGOTIATIONS, IT REMAINS ONE OF IMPORTANCE TO THE US. THE GENEVA TEXT PROVIDED THAT RESOURCE RIGHTS OF TERRITORIES UNDER FOREIGN DOMINATION ARE VESTED IN THE INHABITANTS OF THOSE TERRITORIES. THE US STRONGLY OPPOSED THE TEXT AND INTRODUCED AN AMENDMENT THE EFFECT OF WHICH WAS TO MAKE IT LEAGELY HORATORY RATHER THAN LEGALLY BINDING. THE TEXT IN THE RSNT WAS ESSENTIALLY UNCHANGED BUT THE CHAIRMAN MOVED THE TEXT FROM THE BODY OF THE ARTICLES AND LABELED IT A "TRANSITIONAL" PROVISION. THE PROPRIETY IN AN LOS TREATY OF THE PROVISION IS QUESTIONED IN THE CHAIRMAN'S INTRODUCTORY NOTE. WHILE OUR AMENDMENT IS NOT LIKELY TO BE ACCEPTED BY THE CONFERENCE, WE SHOULD PRESS IT PUBLICLY WHILE WORKING BEHIND THE SCENES TO HAVE THE TRANSITIONAL PROVISION DELETED. IT IS OF NOTE THAT THIS ISSUE IS RELATED TO THE ISSUES OF WHO MAY SIGN THE TREATY AND WHO HAS ACCESS TO DISPUTE SETTLEMENT PROCEDURES.

IT IS IMPORTANT NOT TO RAISE THE ISSUE AT THIS TIME SINCE IT IS NOT PRESENTLY BEFORE THE COMMITTEE FOR DEBATE
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AND NEGOTIATION.

II. OTHER ISSUES

A. THE TERRITORIAL SEA. THE RSNT ESTABLISHES A MAXIMUM 12-MILE LIMIT. THIS IS ALL BUT AGREED. THE ARTICLES ON INNOCENT PASSAGE IN THE TERRITORIAL SEA ARE SATISFACTORY. ACCORDINGLY, WE DO NOT WISH THIS CHAPTER REOPENED. OUR ONE PROBLEM IS THAT THE TEXT PROHIBITS COASTAL STATE REGULATIONS AFFECTING CONSTRUCTION, DESIGN, MANNING, AND EQUIPMENT OF FOREIGN VESSELS IN THE TERRITORIAL SEA: THIS IS DISCUSSED IN CONNECTION WITH POLLUTION IN COMMITTEE 3 BELOW.

B. STRAITS. THE PROVISIONS FOR "TRANSIT PASSAGES" IF STRAITS CONNECTING TWO PORTS OF THE HIGH SEAS ARE SATISFACTORY. WE WISH TO TREAT THEM AS AGREED, AND DO NOT WANT THEM REOPENED FOR NEGOTIATION. HARD-LINE STRAITS STATES (THE YEMEN, OMAN, SPAIN, CHINA) WILL TRY TO REOPEN THE

ARTICLES. WE ARE WORKING WITH MALAYSIA FOR A SUPPLEMENTAL AGREEMENT AMONG COASTAL AND USER STATES TO SUPPORT SPECIAL REGULATIONS IN IMCO TO ESTABLISH A TRAFFIC SEPARATION SYSTEM AND UNDER KEEL CLEARANCE REQUIREMENTS FOR THE MALACCA STRAITS SO AS TO MINIMIZE THE POSSIBILITY OF ACCIDENT; THE QUID PRO QUO IS MALAYSIAN SUPPORT FOR THE STRAITS ARTICLES.

WITH RESPECT TO THE PROBLEM REGARDING THE STRAITS OF THE RSNT PROVISION IS IDENTICAL TO THE PROVISION IN THE 1958 CONVENTION, WHICH EGYPT REFUSED TO SIGN. THIS PROVISION IS UNACCEPTABLE TO ISRAEL, WHO DESIRES THE SAME RIGHT OF TRANSIT PASSAGE AS PROVIDED FOR OTHER STRAITS, NOR IS THE PROVISION FOR NON-SUSPENDABLE INNOCENT PASSAGE ANY MORE PALATABLE TO EGYPT (AND OTHER ARAB BLOC STATES) NOW THAN IT WAS IN 1958. THE U.S. HAS TAKEN THE POSITION THAT THIS ISSUE IS TOO EXPLOSIVE TO BE DEALT WITH IN ANY OTHER MANNER IN THE LOS TREATY, AND A TILTY EITHER WAY FROM THE RSNT COULD DESTROY THE CONFERENCE.

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THE SECRETARY, IF THE ISSUE ARISES, SHOULD EMPHASIZE THIS LATTER POINT.

C. FISHERIES. THE FISHERIES ARTICLES IN THE REVISED SINGLE NEGOTIATING TEXT ARE HIGHLY NEGOTIATED AND IN MOST RESPECTS ACCEPTABLE TO THE UNITED STATES. THEY PROVIDE FOR COASTAL STATE PREFERENTIAL RIGHTS TO COASTAL STOCKS WITHIN THE 200 MILE ECONOMIC ZONE COUPLES WITH OBLIGATIONS UPON THE COASTAL STATE TO PERMIT FOREIGN FISHING WITHIN THE 200 MILE ZONE FOR THAT PART OF THE ALLOWABLE CATCH WHICH THE COASTAL STATE IS UNABLE TO HARVEST. THE RSNT ARTICLE ON SALMON ACCORDS THE STATE IN WHOSE RIVERS SALMON SPAWN MANAGEMENT AUTHORITY OVER THE STOCKS THROUGHOUT THEIR ENTIRE MIGRATORY RANGE, AND WOULD HAVE THE EFFECT OF PREVENTING ANY NEW HIGH SEAS FISHING FOR SALMON. IT REPRESENTS A DELICATE COMPROMISE AMONG THE STATES INVOLVED AND IS SUPPORTED BY THE US. THE PROVISIONS ON TUNA REPRESENT A BALANCE BETWEEN THOSE STATES (US INCLUDED) WHICH SEEK INTERNATIONAL MANAGEMENT OF SUCH HIGHLY MIGRATORY SPECIES AND THOSE (LIKE ECUADOR AND PERU) WHO SEEK EXCLUSIVE COASTAL STATE MANAGEMENT WHEN TUNA ARE FOUND WITHIN THEIR TWO HUNDRED MILE ZONE. WE WOULD LIKE TO SEE THE TUNA ARTICLE STRENGTHENED IN FAVOR

OF INTERNATIONAL MANAGEMENT, AND CAN ACCEPT IT AS A MINIMUM. ATTITUDES UPON THE ARTICLE ARE LIKELY TO BE INFLUENCED BY WEST COAST LATINS. THE OTHER MAJOR FISHERIES ISSUE INVOLVES ATTEMPTS BY LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO ACHIEVE SOME GUARANTEE OF ACCESS TO FISH RESOURCES OF THE ECONOMIC ZONES OF NEIGHBORING AND/OR REGIONAL COASTAL STATES. (SEE PART B ABOVE).

D. RIGHT OF ACCESS OF LANDLOCKED STATES TO AND FROM THE SEA AND RIGHT OF TRANSIT. THE RSNT INCLUDES A SECTION DEALING WITH THE TRADITIONAL ISSUE OF ACCESS TO THE SEA. THESE ARTICLES DEAL WITH THE RIGHTS OF LANDLOCKED STATES
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TO TRANSIT TO SEAPORTS FOR THE PURPOSE OF ENSURING COMMERCIAL TRADE AND COMMUNICATION. DISAGREEMENTS REMAIN BETWEEN CERTAIN LANDLOCKED STATES AND "TRANSIT" STATES ON THESE ISSUES, BUT ON THE WHOLE THEY SEEM TO REFLECT A REASONABLE COMPROMISE. U.S. SUBSTANTIVE INTERESTS ARE NOT AFFECTED.

E. HIGH SEAS. TRADITIONAL PROVISIONS RELATING TO THE HIGH SEAS (E.G. BASELINES, PIRACY, SLAVERY, ETC.) ARE NOT A PROBLEM AND THE RSNT BASICALLY INCORPORATES THE PROVISIONS OF THE 1958 TREATY.

F. ARCHIPELOGIC STATES. THE ARCHIPELOGIC STATES' ARTICLES HAVE BEEN HIGHLY NEGOTIATED BY THE UNITED STATES AND CERTAIN ARCHIPELOGIC STATES, PRIMARILY FIJI, THE BAHAMAS AND INDONESIA. THE PRESENT ARTICLES ARE A DELICATE BALANCE BETWEEN 1) THE DESIRES OF THE ARCHIPELOGIC STATES TO ENCLOSE THEIR ISLANDS WITHIN BASELINES FOR ECONOMIC AND SECURITY REASONS AND 2) THE STRATEGIC REQUIREMENTS OF THE MAJOR MARITIME POWERS TO HAVE GUARANTEED RIGHTS FOR THE CONTINUOUS AND EXPEDITIOUS TRANSIT THROUGH AND OVER ARCHIPELOGIC WATERS VIA SEALANES. OUTSTANDING MAJOR ISSUES RELATE TO 1) THE BREADTH OF SEALANES, AND 2) AND EFFORT BY INDONESIA TO DISTINGUISH BETWEEN STATE AND CIVIL AIRCRAFT. THE PRINCIPAL ARCHIPELOGIC STATES INCLUDE INDONESIA, FIJI, THE BAHAMAS, PAPUA NEW GUINEA AND THE PHILIPPINES. THE LAST-NAMED HAS BEEN THE LEAST COOPERATIVE. THE EXISTING ARTICLES, IN THE MAIN, ARE SATISFACTORY TO THE UNITED STATES.

NOTE BY OC/T: RAISED TO EXDIS PER SSO-A. OTTO

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S E C R E T SECTION 5 OF 8 USUN 3143

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FROM US DEL LOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FOR AMB. LEARSON

COMMITTEE III

I. SCIENTIFIC RESEARCH

A. BACKGROUND

THE EXISTING TEXT GOES MUCH TOO FAR IN THE DIRECTION OF COASTAL STATE CONTROL OVER MARINE SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE ALTHOUGH WE HAVE ALWAYS RECOGNIZED THAT THE STRONG DEMANDS OF ALMOST ALL DEVELOPING COASTAL STATES IN THIS REGARD WOULD HAVE TO BE ACCOMMODATED. THE SCIENTIFIC COMMUNITY, THE PRESIDENT OF THE NATIONAL ACADEMY OF SCIENCE--DR. PHILIP HANDELER--AND A NUMBER OF PEOPLE IN CONGRESS ARE STRONGLY OPPOSED TO THE TEXT. SOME SCIENTISTS HAVE STATED THAT THEY WOULD GO SO FAR TO OPPOSE RATIFICATION OF THE TREATY IF THE TEXT WERE NOT SUBSTANTIALLY AMENDED. THE US ORIGINALLY PROPOSED THAT SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE BE SUBJECT TO CERTAIN OBLIGATIONS ON THE RESEARCH STATE, INCLUDING NOTICE TO THE COASTAL STATE, A RIGHT FOR THE COASTAL STATE TO PARTICIPATE IN THE RESEARCH, SHARING OF DATA AND RESULTS, AND ASSISTANCE TO THE COASTAL STATE IN INTERPRETING THE DATA. WE HAVE CONSISTENTLY

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OPPOSED A RIGHT OF COASTAL STATE CONSENT (EXCEPT FOR DRILLING INTO THE SEABED), WHILE THE LARGE MAJORITY OF COASTAL STATES HAVE CONSISTENTLY SOUGHT A RIGHT OF CONSENT FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE. IN YOUR APRIL 8 SPEECH, WE AGREED TO A COMPROMISE WHICH WAS INCLUDED IN THE GENEVA SNT, WHICH WOULD INCLUDE THE US OBLIGATIONS, BUT WOULD ALSO GIVE THE COASTAL STATE A RIGHT OF CONSENT FOR SCIENTIFIC RESEARCH DIRECTLY RELATED TO THE EXPLORATION AND EXPLOITATION OF THE NATURAL RESOURCES OF THE ECONOMIC ZONE, WITH COMPULSORY DISPUTE SETTLEMENT PROCEDURES TO MAKE FINAL DETERMINATIONS IN CASE OF DISAGREEMENT. NEGOTIATIONS ON SCIENTIFIC RESEARCH BOGGED DOWN IN THE SPRING IN PART BECAUSE CERTAIN COASTAL STATES INSISTED THAT THE COMPROMISE FORMULA DID NOT PROTECT THEIR SECURITY INTERESTS; WE, IN TURN, REFUSED TO AGREE TO A PROPOSAL FOR A COASTAL STATE RIGHT TO DENY CONSENT ON SECURITY-RELATED GROUNDS, WHICH WOULD HAVE BEEN A MAJOR CHANGE IN THE CHARACTER OF THE ZONE.

IN THE CLOSING DAYS OF THE SPRING SESSION, THE USSR INFORMALLY PROPOSED A NEW COMPROMISE WHICH THE BULGARIAN CHAIRMAN OF THE COMMITTEE INCORPORATED INTO THE RSNT DESPITE STRONG US OBJECTIONS. UNDER THIS APPROACH, THE RESEARCHING STATE NOTIFIES THE COASTAL STATE IN ADVANCE OF ANY PROJECT AND IS REQUIRED TO FULFILL THE OBLIGATIONS PROPOSED ORIGINALLY BY THE UNITED STATES. HOWEVER, THE CONSENT OF THE COASTAL STATE IS REQUIRED FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF, BUT SUCH CONSENT SHALL NOT BE WITHHELD UNLESS THE RESEARCH (1) BEARS SUBSTANTIALLY ON THE EXPLORATION FOR AND EXPLOITATION OF NATURAL RESOURCES, (2) INVOLVES DRILLING OR THE USE OF EXPLOSIVES, (3) UNDULY INTERFERES WITH COASTAL STATE ECONOMIC ACTIVITIES IN THE ECONOMIC ZONE, OR (4) INVOLVES AN ARTIFICIAL ISLAND OR INSTALLATION UNDER COASTAL STATE JURISDICTION PURSUANT TO OTHER PROVISIONS AT THE TREATY. THERE IS ALSO A PROVISION THAT THE PROJECT CAN GO FORWARD IF THE COASTAL STATE DOES NOT RESPOND TO THE NOTIFICATION BY THE RESEARCHING STATE AT LEAST 2 MONTHS BEFORE THE PROJECT IS DUE TO BEGIN. FINALLY, THE TEXT PROVIDED THAT BINDING THIRD-PARTY DISPUTE SETTLEMENT PROCEDURES WILL APPLY TO ALL CASES OF DISAGREEMENT BETWEEN THE RESEARCHING AND COASTAL STATES. HOWEVER, THE SCIENTIFIC RESEARCH PROJECT

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MAY NOT GO FORWARD WHILE DISPUTE SETTLEMENT IS UNDERWAY.

THERE ARE TWO VERY SERIOUS PROBLEMS WITH THE REGIME IN
THE REVISED TEXT:

--THE BASIC CONCEPT OF REQUIRING COASTAL STATE CONSENT
FOR ALL SCIENTIFIC RESEARCH; AND

--THE BROAD, VAGUE WORDING OF THE PROVISION ALLOWING THE
COASTAL STATE TO WITHHOLD CONSENT.

THE OVERALL CONSENT CONCEPT ADDS ANOTHER ELEMENT OF COASTAL
STATE CONTROL AND JURISDICTION TO THE ECONOMIC ZONE,
MAKING IT MUCH MORE LIKE A TERRITORIAL SEA. THE OVERALL
CONSENT CONCEPT ITSELF DOES NOT PROVIDE THE COASTAL STATE
WITH THE LEGAL AUTHORITY TO STOP ANY PROJECT SINCE THE
CONDITIONS FOR WITHHOLDING CONSENT ARE SPECIFIED (ALTHOUGH
THE CONDITIONS IN THE RSNT ARE MUCH TOO BROAD.) HOWEVER,
IN THE LONG-TERM DEVELOPMENT OF THE LAW OF THE SEA AND
PERHAPS IN PRACTICE IN SOME CASES, THE CONSENT REQUIREMENT
MAY WELL BECOME COMPLETE.

ON THE SECOND POINT ABOVE, THE CONDITIONS FOR WITHHOLDING
CONSENT ARE BROAD, PARTICULARLY THE REFERENCE TO
POSSIBLE INTERFERENCE WITH COASTAL STATE ECONOMIC ACTIVITIES,
AND COULD BE UTILIZED BY A COASTAL STATE TO STOP ALMOST
ANY SCIENTIFIC RESEARCH PROJECT. THEY MUST BE AMENDED.

THE OTHER SERIOUS PROBLEMS ARE (1) WE OPPOSE APPLYING ANY
CONSENT REGIME (EXCEPT FOR DRILLING) TO THE CONTINENTAL
SHELF BEYOND 200 MILES, AND (2) THE AUTOMATIC CESSATION OF
A PROJECT DURING DISPUTE SETTLEMENT. ONE OF OUR PROBLEMS
IN DEALING WITH THE CONTINENTAL SHELF ISSUE IS THAT UNDER
THE EXISTING 1958 CONTINENTAL SHELF CONVENTION, TO WHICH
WE ARE A PARTY, COASTAL STATE CONSENT IS REQUIRED FOR
SCIENTIFIC RESEARCH CONCERNING THE CONTINENTAL SHELF AND
UNDERTAKEN THERE; ITS OBLIGATION IS NOT "NORMALLY" TO
DENY CONSENT FOR RESEARCH BY A "QUALIFIED INSTITUTION".

THERE ARE IMPORTANT POSITIVE ELEMENTS IN THE REVISED TEXT:

--ALL SCIENTIFIC RESEARCH DISPUTES ARE SUBJECT TO BINDING
THIRD-PARTY DISPUTE SETTLEMENT PROCEDURES. WHILE THIS
DOES NOT, IN A PRACTICAL SENSE, SAVE AN INDIVIDUAL PROJECT,
IT DOES PROVIDE SAFEGUARDS AGAINST ARBITRARY ACTION.

--ALL REQUESTS FOR SCIENTIFIC RESEARCH PROJECTS ARE SUBJECT
TO A TACIT CONSENT SYSTEM. THUS, IF REQUESTS ARE NOT
ANSWERED, WHICH IS OFTEN THE CASE TODAY, THE PROJECT MAY
PROCEED. HOWEVER, THIS POSITIVE ASPECT MIGHT BE NEGATED

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IF RESEARCHERS ARE UNABLE OR UNWILLING TO PLAN AND OPERATE
IN THIS UNCERTAIN ATMOSPHERE.

--THE COASTAL STATE DOES NOT HAVE THE RIGHT TO REFUSE
CONSENT ON SECURITY GROUNDS, THUS AVOIDING A MAJOR
CHANGE IN THE NATURE OF THE ECONOMIC ZONE.

B. CURRENT NEGOTIATING STATUS

COMMITTEE III HAS HAD TWO DAYS OF DEBATE ON THE BASIC
REGIME FOR SCIENTIFIC RESEARCH AND WILL CONCLUDE
COMMITTEE-LEVEL DEBATE ON MONDAY, AUGUST 9. CHAIRMAN
YANKOV (BULGARIA) WILL THEN HOLD PRIVATE SMALL-GROUP
NEGOTIATIONS TO ATTEMPT TO FIND A COMPROMISE. THE UNITED
STATES HAS INTERVENED TWICE WITH STRONG STATEMENTS INDICATING
THE UNACCEPTABILITY OF THE REVISED TEXT, THE NECESSITY OF
DELETING THE OVERALL CONSENT CONCEPT, AND THE FACT THAT A
FAILURE TO ACHIEVE MAJOR CHANGES WOULD RAISE SERIOUS QUESTIONS
OF THE UNITED STATES BECOMING PARTY TO THE TREATY.
WE HAVE BEEN SUPPORTED, IN VARYING DEGREES OF FIRMNESS, BY
THE EUROPEAN ECONOMIC COMMUNITY, FINLAND AND JAPAN. WE HAVE
BEEN OPPOSED BY A LARGE NUMBER OF DEVELOPING COASTAL
STATES (20 SPEAKERS TO DATE INCLUDING THE PRC), MANY OF
WHOM HAVE ARGUED THAT THE REVISED TEXT NEEDS TO BE AMENDED
TO PROVIDE FURTHER AUTHORITY FOR THE COASTAL STATE.
IN SUM, THE COMMITTEE IS POLARIZED. WHILE NO ONE HAS PRO-
POSED COMPROMISES, MEXICO AND AUSTRALIA AND POSSIBLY NORWAY
ARE INTERESTED IN PLAYING A MEDIATING ROLE. THE
USSR HAS NOT SPOKEN PUBLICLY ALTHOUGH THEY HAVE PRIVATELY TOLD
US THEY COULD ACCEPT THE REVISED TEXT.

NOTE BY OC/T: RAISED TO EXDIS PER S/S-O - MR. OTTO.

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FROM US DELOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

C. DELEGATION STRATEGY

THE DELEGATION IS TAKING AN EXTREMELY HARD LINE BOTH PUBLICLY AND PRIVATELY AND IS NOT PUTTING FORWARD IN PUBLIC THE U.S. AMENDMENTS TO THE TEXT. ANY U.S. PROPOSALS FOR COMPROMISE WILL NOT BE WELL-RECEIVED AND WOULD BE VIEWED AS A SIGN OF WEAKNESS. ALSO, IT IS OUR ASSESSMENT THAT ONLY THE U.S., THE FRG, AND POSSIBLY FRANCE STRONGLY OPPOSE THE CONSENT REGIME. THE OTHERS WHO ARE PUBLICLY SUPPORTING US WILL, IN THE END, CONCEDE THE ISSUE. CONSEQUENTLY, WE MUST REMAIN FIRM WITH OUR COMPROMISE PROPOSALS IN FACT BEING MADE BY OTHER COUNTRIES, POSSIBLY AUSTRALIA OR NORWAY. WE WILL ENCOURAGE THEM AND MEXICO TO DO THIS IN THE SMALL GROUP NEGOTIATIONS. MORE IMPORTANTLY, WE ARE WORKING TO CONVINCE THE SOVIETS TO SUPPORT A COMPROMISE OR, AT A MINIMUM, TO BE SILENT AND ALLOW CHAIRMAN YANKOV (BULGARIA) A FREE HAND TO SEEK COMPROMISE. NO STRATEGY CAN SUCCEED IF THE USSR OPPOSES US EITHER PUBLICLY OR PRIVATELY.

D. YOUR ROLE AT THIS TIME

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THE DELEGATION NEEDS YOUR ASSISTANCE AT THIS TIME IN TWO WAYS:

--SECURING SOVIET ASSISTANCE IN AMENDING THE TEXT, AND;
--CONVINCING THE OTHERS YOU WILL MEET THAT THIS IS

E. FUTURE STRATEGY

IF YOUR VISIT ACHIEVES THE ABOVE OBJECTIVES, WE WOULD THEN WORK IN YANKOV'S SMALL GROUP NEGOTIATIONS TOWARD OUR PROPOSALS, CONTINUING TO UTILIZE THE GOOD OFFICES OF OTHER DELEGATIONS TO SEEK THE DESIRED SUBSTANTIVE OUTCOME. IF THE ABOVE STRATEGY FAILS AND THE COMMITTEE MOVES TOWARD CONSENSUS ON AN UNSATISFACTORY BASIS, WE WILL WORK TO PREVENT ANY AGREEMENT ON THE ISSUE, THUS PRESERVING IT FOR A LATER STAGE OF NEGOTIATIONS.

II. MARINE POLLUTION

A. BACKGROUND

THERE IS ONE MAJOR ISSUE OF CONTROVERSY IN THIS AREA REQUIRING FURTHER NEGOTIATION. WE HAVE ARGUED, WITH THE SUPPORT OF CANADA, AUSTRALIA, AND MANY DEVELOPING COASTAL STATES, THERE SHOULD BE NO RESTRICTIONS ON COASTAL STATE AUTHORITY TO ESTABLISH VESSEL POLLUTION CONTROL REGULATIONS IN THE

TERRITORIAL SEA (OUTSIDE STATES) OTHER THAN A REQUIREMENT NOT TO HAMPER INNOCENT PASSAGE. THE U.K., USSR, JAPAN AND OTHERS SUPPORT A PROVISION IN THE CURRENT COMMITTEE 2 RSNT THAT THERE SHOULD BE NO COASTAL STATE RIGHT TO SET CONSTRUCTION, DESIGN, EQUIPMENT, AND MANNING REGULATIONS. THE U.K. GOES EVEN FURTHER AND WOULD RESTRICT RIGHTS TO ESTABLISH MORE STRICT SAFETY REQUIREMENTS. EXISTING U.S. DOMESTIC LAW AUTHORIZES SUCH REGULATIONS, AND WE HAVE BEEN STERNLY QUESTIONED BY CONGRESS ON THE ISSUE.

THE RSNT CONTAINS NO RESTRICTIONS ON COASTAL STATE STANDARD SETTING IN THE POLLUTION TEXT IN PART III, BUT DOES HAVE SUCH A RESTRICTION IN PART II OF THE TEXT. WE HAVE OFFERED THE GROUP OF FIVE A COMPROMISE IN WHICH WE WOULD ACCEPT THE RESTRICTION ON COASTAL STATE RIGHTS TO ESTABLISH ALL TYPES OF SECRET

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REGULATIONS, EXCEPT THOSE AIMED AT POLLUTION PREVENTION, IF THEY WOULD AGREE TO FIGHT THE ISSUE ONLY IN VCOMMITTEE III. THIS WOULD ALLOW US TO PRESIDENT A UNITED FRONT IN COMMITTEE II ON NAVIGATION ISSUES, WHILE MOVING THIS ISSUE TO COMMITTEE III WHERE WE WOULD HAVE A TACTICAL ADVANTAGE. THE USSR HAS ACCEPTED A MODIFICATION OF THE US AMENDMENT IN THE COMMITTEE II SECTION OF THE RSNT SUBJECT TO APPROVAL BY OTHER MEMBERS OF THE GROUP OF FIVE. THE U.K. HAS REJECTED THE AMENDMENT AND WANTS THE ISSUE TO REMAIN IN COMMITTEE II.

IN GENERAL TERMS, THE REMAINDER OF THE REVISED TEXT IS ACCEPTABLE TO US AND PROBABLY TO THE CONFERENCE AS A WHOLE ALTHOUGH WE AND PROBABLY OTHERS HAVE SOME OTHER ISSUES TO RAISE. THE TEXT BEGINS WITH A SERIES OF ARTICLES SETTING OUT GENERAL OBLIGATIONS TO PREVENT POLLUTION, REQUIREMENTS TO COOPERATE WITH OTHERS, REQUIREMENTS TO ASSESS POSSIBLE FUTURE POLLUTION, AND GENERAL OBLIGATIONS TO PROVIDE TECHNICAL ASSISTANCE FOR POLLUTION CONTROL. THERE ARE SEVERAL ARTICLES WITH OBLIGATIONS TO ESTABLISH AND ENFORCE REGULATIONS REGARDING LAND-SOURCE MARINE POLLUTION, POLLUTION FROM SEABED ECONOMIC ACTIVITIES, AND POLLUTION FROM OCEAN DUMPING OF WASTES. THE MAJOR PORTION OF THE TEXT DEALS WITH VESSEL SOURCE POLLUTION. IT PROVIDES STRICT FLAG STATE OBLIGATIONS TO ENACT AND ENFORCE POLLUTION CONTROL REGULATIONS, RIGHTS FOR THE PORT OF ARRIVAL STATE TO ENFORCE AGAINST VIOLATIONS OF INTERNATIONAL DISCHARGE REGULATIONS, AND LIMITED COASTAL STATE RIGHTS TO ENFORCE AGAINST VESSELS IN THE ECONOMIC ZONE FOR GROSS OR FLAGRANT VIOLATIONS CAUSING MAJOR DAMAGE. THERE ARE ALSO A SERIES OF PROCEDURAL SAFEGUARDS, A MILITARY EXEMPTION, AND A REQUIREMENT FOR BINDING THIRD-PARTY SETTLEMENT OF DISPUTES.

B. CURRENT NEGOTIATING STATUS

CHAIRMAN YANKOV HAS IDENTIFIED THE QUESTION OF COASTAL STATE STANDARD-SETTING REGARDING VESSEL POLLUTION IN THE TERRITORIAL SEA AS A MAJOR OUTSTANDING ISSUE. COMMITTEE LEVEL DISCUSSION OF THE ISSUE BEGINS MONDAY AFTERNOON, AUGUST 9. ALL OF THE MAJOR MARITIME POWERS (EUROPEANS, USSR, AND JAPAN) CONTINUE TO STRONGLY SUPPORT THE RESTRICTION ON COASTAL STATE AUTHORITY AND SOME DEVELOPING COUNTRIES

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SUPPORT THEM. CANADA, AUSTRALIA, NEW ZEALAND, AND MOST DEVELOPING COUNTRIES CONTINUE TO SUPPORT OUR POSITION TO DELETE THE RESTRICTION. BECAUSE OF THE NATURE OF THE ISSUE, IT IS EXTREMELY DIFFICULT TO FIND SUBSTANTIVE COMPROMISE.

C. DELEGATION STRATEGY

OUR STRATEGY IS TO ISOLATE OUR OPPONENTS IN ORDER TO CONVINCE THEM THAT THEY CANNOT SUCCEED AND SHOULD ACCEPT OUR APPROACH (THE USSR EARLIER PRIVATELY INDICATED SOME FLEXIBILITY). THE U.K. IS UNLIKELY TO CONCEDE IN ANY SITUATION AND IS LOBBYING CONGRESS. IF WE CANNOT ISOLATE OUR OPPONENTS, WE WILL CONSIDER PROPOSING AMENDMENTS TO LIMIT THE SCOPE OF THE ARTICLE. HOWEVER, WE WILL DO SO ONLY IF OUR PRIMARY STRATEGY FAILS AND, IN ANY CASE, ONLY AT A LATER STAGE OF THE NEGOTIATION.

D. YOUR ROLE AT THIS POINT

IT IS NOT NECESSARY FOR YOU TO RAISE THE ISSUE AT THIS POINT EXCEPT DURING YOUR MEETING WITH THE CONFERENCE LEADERSHIP. HOWEVER, THE U.K., AND POSSIBLY THE USSR AND FRG, MAY RAISE THE ISSUE WITH YOU. SINCE WE WILL NOT BE AT A POINT REQUIRING COMPROMISE, YOU WOULD SIMPLY INDICATE FIRMNESS ON OUR POSITION.

E. FUTURE STRATEGY

IF OUR PRIMARY STRATEGY IS SUCCESSFUL, THERE WILL BE NO FURTHER ROLE FOR YOU. IF IT IS NOT, WE MAY NEED YOUR FUTURE ASSISTANCE TO CONVINCE THE U.K. AND POSSIBLY OTHERS TO ACCEPT COMPROMISE AMENDMENTS.

NOTE BY OC/T: RAISED TO EXDIS PER S/S-O, A. OTTO.

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FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

FROM US DEL LOS

DISPUTE SETTLEMENT:

A. BACKGROUND

PART IV OF THE REVISED SINGLE NEGOTIATING TEXT (RSNT) SETS FORTH
A COMPREHENSIVE SYSTEM FOR THE COMPULSORY SETTLEMENT OF DISPUTES
THROUGH
PROCEDURES ENTAILING A LEGALLY BINDING DECISION. THE US HAS STRONGLY
SUPPORTED THIS APPROACH. IT IS NOW WIDELY AGREED IN THE CONFERENCE
THAT
SOME SUCH SYSTEM SHOULD BE INCLUDED IN THE TREATY, BUT OPPONENTS WILL
TRY TO WATER DOWN THE SYSTEM WITH EXCEPTIONS AND QUALIFICATIONS.
THE TEXT OF PART IV OF THE RSNT IS LARGELY ACCEPTABLE TO THE
U.S. THERE ARE, HOWEVER, A NUMBER OF DIFFICULT ISSUES REMAINING
IN WORKING OUT THE SPECIFICS OF THE SYSTEM. MOREOVER, IT IS
A RATHER COMPLEX SYSTEM ENTAILING A NUMBER OF
ALTERNATIVE PROCEDURES.
WE WOULD LIKE TO SIMPLIFY IT IF POSSIBLE, BUT THIS MAY BE
QUITE DIFFICULT SINCE THE PARTICIPANTS HAVE WIDELY VARYING
PREFERENCES FOR THE FORA IN WHICH THEY COULD BE SUED AND THERE
IS A STRONG FEELING THAT A STATE SHOULD
ONLY BE SUED IN A FORUM IT HAS CHOSEN.

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PART I OF THE RSNT (DEEP SEABEDS) WOULD ESTABLISH A LARGELY SEPARATE

SYSTEM FOR COMPULSORY DISPUTE SETTLEMENT WITH RESPECT TO DISPUTES RELATING TO THE DEEP SEABED. THE RELATIONSHIP BETWEEN THE NEW SEABED TRIBUNAL AND THE PROCEDURES OF PART IV, WHICH INCLUDE A NEW LAW OF THE SEA TRIBUNAL REMAINS TO BE RESOLVED. A NUMBER OF STATES FAVOR MERGING THE TWO TRIBUNALS, BUT OUR INDUSTRY IS OPPOSED.

B. MAIN ISSUES.

1. JURISDICTION IN THE ECONOMIC ZONE. THE MOST IMPORTANT AND DIFFICULT ISSUE RELATING TO PART IV IS THE APPLICATION OF COMPULSORY SETTLEMENT OF DISPUTES ARISING FROM THE EXERCISE OF COASTAL STATE RIGHTS IN THE ECONOMIC ZONE. ART. 18 OF THE PRESENT TEXT EXCLUDES SUCH DISPUTES, AND THEN MAKES A NUMBER OF EXCEPTIONS TO THAT EXCLUSION RELATING TO INTERFERENCE WITH NAVIGATION, OVERFLIGHT, SUBMARINE CABLES AND PIPELINES AND THE ENVIRONMENT. THE MAIN TREND IN THE GROUP OF 77 IS TO STRENGTHEN THE INCLUSION WHICH MOST DEVELOPED COUNTRIES WISH TO STRENGTHEN THE EXCEPTIONS TO THE EXCLUSION IN ORDER TO SUBMIT TO DISPUTE SETTLEMENT SCIENTIFIC RESEARCH AND FISHERIES AS WELL. THIS IS IN A BROADER SENSE ONE ASPECT OF THE BASIC CONTINGENCY IN COMMITTEE II OVER THE NATURE OF THE ECONOMIC ZONE, WITH THE MARITIME STATES EMPHASIZING ITS INTERNATIONAL CHARACTER, PARTICULARLY ON MATTERS OTHER THAN RESOURCES. THERE SEEMS TO BE GROWING SUPPORT FOR THE VIEW THAT DISPUTES RELATING TO INTERFERENCE WITH FREEDOM OF NAVIGATION AND OVERFLIGHT IN THE ECONOMIC ZONE SHOULD BE SUBJECT TO DISPUTE SETTLEMENT. IT ALSO SEEMS LIKELY THAT A VIOLATION OF INTERNATIONAL STANDARDS RELATING TO MARINE ENVIRONMENT WILL BE SUBJECT TO DISPUTE SETTLEMENT. AT THIS SESSION THERE WERE SOME INDICATIONS (E.G. BY CHILE) THAT AT LEAST SOME DISPUTES RELATING TO SCIENTIFIC RESEARCH COULD BE SUBJECT TO DISPUTE SETTLEMENT. MANY COASTAL STATES SEEM TO BE RECONCILED TO THE FACT THAT THE BASIC RULE IS COMPULSORY JURISDICTION OVER ALL DISPUTES RELATING TO THE INTERPRETATION OR APPLICATION OF THE CONVENTION, WITH SOME EXEMPTIONS. BUT MEXICO AND INDIA ARE STILL STRONGLY NEGATIVE ABOUT ANY INTERNATIONAL INTERFERENCE WITH THE RIGHTS OF THE COASTAL STATE. OUR GOAL IS TO ACHIEVE AGREEMENT ON DISPUTE SETTLEMENT ON THE ABOVE ISSUES, SO THAT THE REMAINING PRINCIPAL ISSUE IS THE

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EXTENT TO WHICH DISPUTE SETTLEMENT SHOULD APPLY TO FISHERIES. THERE MIGHT BE A POSSIBILITY OF EXTENDING DISPUTE SETTLEMENT TO THE QUESTION OF CONSERVATION OF LIVING RESOURCES. THERE IS LESS LIKELIHOOD THAT THE COASTAL STATES WILL ACCEPT ANY LIMITATIONS ON THE MANAGEMENT OF THESE RESOURCES. THEY ARE OPPOSED TO ANY SECOND-

GUESSING BY AN INTERNATIONAL BODY WITH RESPECT TO DECISIONS RELATING TO MAXIMUM SUSTAINABLE YIELD, OR THE CAPACITY OF

THE COASTAL STATE TO HARVEST LIVING RESOURCES; THEY REJECT ANY CONTROLS OVER THEIR DECISIONS RELATING TO THE RIGHT OF ACCESS OF ANY PARTICULAR FOREIGN COUNTRY. SOME MEMBERS OF CONGRESS ARE LIKELY TO HAVE THE SAME ATTITUDE.

2. COMPETENT ORGAN. PART IV ALLOWS EACH STATE WIDE LATITUDE IN CHOOSING A FORUM SO LONG AS AT LEAST ONE METHOD OF COMPULSORY DISPUTE SETTLEMENT LEADING TO ABINDING DECISION APPLIES TO SUITS AGAINST EVERY PARTY.

FROM THE BEGINNING OF THE NEGOTIATIONS, IT WAS CLEAR THAT MOST AFRICAN COUNTRIES AND SOME ASIAN AND LATIN AMERICAN COUNTRIES, AS WELL AS THE SOVIET UNION AND FRANCE WERE OPPOSED TO CONFERRING JURISDICTION ON THE INTERNATIONAL COURT OF JUSTICE. A FEW STATES, ESPECIALLY JAPAN AND SOME EUROPEAN COUNTRIES, HAVE STRONGLY SUPPORTED THE COURT, REGARDLESS OF THIS OPPOSITION. FRANCE AND THE SOVIET UNION PREFER SPECIAL COMMISSIONS OF TECHNICAL CHARACTER TO DEAL WITH FISHERIES, MARINE POLLUTION, SCIENTIFIC RESEARCH, AND NAVIGATION; THEY ARE WILLING TO ACCEPT ARBITRATION FOR OTHER SUBJECTS. THERE IS ALSO A GROUP OF COUNTRIES PREFERRING SIMPLE ARBITRATION PROCEDURES. THE MAJORITY OF THE MEMBERS OF THE GROUP OF 77 WHO ARE ACTIVE ON DISPUTE SETTLEMENT PREFER A SPECIAL LOS TRIBUNAL, AND INDIA AND ALGERIA RECENTLY ENDORSED IT.

THE SO-CALLED RIPHAGEN FORMULA, INVENTED BY THE NETHERLANDS LEGAL ADVISER, ALLOWS EACH COUNTRY TO CHOOSE, AT THE TIME OF RATIFICATION, ONE OR MORE OF FOUR DISPUTE SETTLEMENT FORA: THE INTERNATIONAL COURT OF JUSTICE; ARBITRATION; THE LOS TRIBUNAL; OR THE SYSTEM OF SPECIAL COMMISSIONS (WITH ARBITRATION FOR OTHER SUBJECTS). WHEN BOTH COUNTRIES ACCEPT THE SAME FORUM, THERE IS NO PROBLEM; IF THEY HAVE ACCEPTED DIFFERENT FORA, THE

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PLAINTIFF HAS TO GO TO THE FORUM CHOSEN BY THE DEFENDANT. THE FORMULA HAS BASICALLY BEEN INCORPORATED INTO THE RSNT. THE UNITED STATES FAVORS THE FLEXIBILITY OF THE RIPHAGEN FORMULA; THE SOVIET UNION HAS ACCEPTED IT, THOUGH IT DOES NOT LIKE THE LOS TRIBUNAL. THE FRENCH, AND TO SOME EXTENT THE BRITISH, PREFER A STRAIGHT ARBITRATION FORMULA; THEY WOULD APPLY IT, AT LEAST, IN ANY CASE WHERE THE TWO DECLARATIONS BY THE PARTIES TO THE DISPUTE DO NOT COINCIDE.

3. TWO TRIBUNALS

THE UNITED STATES WAS THE FIRST TO PROPOSE A SEA-BED TRIBUNAL WITH A SPECIAL JURISDICTION, SIMILAR TO THE FRENCH CONSEIL D'ETAT AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, FOR DISPUTES BETWEEN THE DEASED

AUTHORITY AND STATES OR PRIVATE CONTRACTORS. IT WAS
ALSO THE UNITED STATES PROPOSAL IN 1973 WHICH FIRST
SUGGESTED THE ESTABLISHMENT OF AN OVERALL LOS TRIBUNAL FOR NON-
SEABED MATTERS. THE PROPOSAL WAS PROMPTED BY THE
NEED FOR PROTECTING THE VARIETY OF US INTERESTS IN THE
OCEANS AND FOR PREVENTING THE MANY LIKELY OCEAN DISPUTES
FROM ESCALATING INTO DANGEROUS CONFLICTS OF THE "COD WAR"
VARIETY. THE UNITED STATES WANTED ALSO TO ACHIEVE SOME
UNIFORMITY IN THE INTERPRETATION OF THE LOS CONVENTION,
WHICH COULD BE DESTROYED IF A VARIETY OF ARBITRAL TRI-
BUNALS SHOULD
INTERPRET THE CONVENTION IN MANY DIFFERENT WAYS,
ESPECIALLY ON REGIONAL LINES.

NOTE BY OC/T: RAISED TO EXDIS PER S/S-O - MR. OTTO.

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FOR US DELLOS

FOR D/LOS, S/S, S/P, OES, EB, AND L ONLY FROM AMB. LEARSON

THE SEABED TRIBUNAL WOULD BE ELECTED BY THE SEABED
ASSEMBLY ON NOMINATION OF THE SEABED COUNCIL, THUS
ENSURING A MEASURE OF INFLUENCE OF THE MAJOR POWERS ON
THE SELECTION OF THE JUDGES. THE LOS TRIBUNAL WOULD BE
ELECTED BY A CONFERENCE OF THE CONTRACTING PARTIES,
BY A TWO-THIRDS MAJORITY, WITH SOME PROTECTION FOR THE
DEVELOPED COUNTRIES (ESPECIALLY IF THEY HAVE SOME SUPPORT
FROM THE LANDLOCKED ONES), BUT WITH LESS GUARANTEE OF FAVORABLE

ELECTIONS THAN IS LIKELY IN THE SEABED TRIBUNAL. THE CURRENT DRAFT OF THE STATUTE OF THE LOS TRIBUNAL INCLUDES REGIONAL FORMULA FOR THE SELECTION OF JUDGES (WESTERN EUROPE AND OTHERS - 3, EASTERN EUROPE - 2, ASIA - 3, LATIN AMERICA - 3, AFRICA - 4), WHICH THE UNITED STATES AND THE WESTERN EUROPEAN COUNTRIES HAVE FOUND UNSATISFACTORY. AN ATTEMPT WILL BE MADE TO ELIMINATE THIS FORMULA, AS IT IS ARBITRARY WITH THE IDEA OF AN INDEPENDENT TRIBUNAL, AND ENCOURAGES THE VIEW THAT JUDGES REPRESENT REGIONS.

C. STRATEGY AND FUNCTION OF YOUR VISIT

UNLIKE COMMITTEES I AND II, THE INFORMAL PLENARY CONSIDERING DISPUTE SETTLEMENT HAS NOT YET BEEN THE
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SCENE OF POLARIZATION ALONG NORTH/SOUTH LINES OR BETWEEN COASTAL, LANDLOCKED/GEOGRAPHICALLY DISADVANTAGED AND MARITIME STATES. HOWEVER, PART IV OF THE RSNT HAS NOT BEEN THE RESULT OF AS INTENSIVE NEGOTIATION AS THE OTHER PARTS, AND THUS IS NOT VIEWED AS A "REVISED" SNT IN THE SENSE OF THE OTHER TEXTS. MANY COASTAL STATES HAVE CONSIDERED IT PREMATURE UP TO NOW TO CONSIDER DISPUTE SETTLEMENT SERIOUSLY, SINCE IT IS DEPENDENT IN CRITICAL RESPECTS ON WHAT IS SETTLED IN THE MAIN COMMITTEES. SINCE MANY STATES ARE NOW PARTICIPATING ACTIVELY FOR THE FIRST TIME ON THE SUBJECT, THE PARAMETERS OF OUR NEGOTIATING HURDLES ARE AS YET UNCLEAR. ACCORDINGLY, WE ARE SEEKING TO CLARIFY THE STRENGTH OF MOVES TO COMBINE THE TRIBUNALS, SIMPLIFY THE CHOICE OF PROCEDURES, AND ALTER THE EXCLUSION OF DISPUTES ARISING FROM THE EXERCISE OF COASTAL STATE RIGHTS IN THE ECONOMIC ZONE. SPECIFIC STRATEGIES FOR KNOWN PROBLEMS, LIKE THE FRENCH/BRITISH INSISTENCE ON ARBITRATION AS THE PRIMARY PROCEDURE, ARE REFLECTED IN THE COUNTRY PAPERS.

YOUR VISIT AT THIS POINT IS MOST USEFUL FOR EMPHASIZING THE IMPORTANCE OF COMPULSORY DISPUTE SETTLEMENT FOR MOST DISPUTES, ESPECIALLY RELATING TO THE ECONOMIC ZONE, AND THE NEED TO CONCENTRATE ON REACHING REASONABLE ACCOMMODATIONS THAT DO NOT SUBVERT THIS PRINCIPLE.
BENNETT

NOTE BY OC/T: RAISED TO EXDIS PER S/S-0 - MR. OTTO.

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